

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 03-0093P
Use Tax
For Calendar Years 1999, 2000, and 2001**

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ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer was audited for calendar years 1999, 2000, and 2001. Upon audit it was discovered that the taxpayer failed to self-assess use tax on clearly taxable items such as capital items, uniforms, janitorial supplies, miscellaneous auto parts, maintenance and repair items, and other miscellaneous purchases.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer protests the penalty assessed and states that it diligently reviews the invoices for proper sales and use tax and the tax due was not based upon willful neglect but an oversight in the system.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

Taxpayer failed to remit use tax on clearly taxable items. Those items amounted to 81.61%,

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68.13%, and 51.39% of unpaid tax for calendar years 1999, 2000, and 2001, respectively and the taxpayer has not provided reasonable cause to allow the department to waive the penalty.

FINDING

Taxpayer's protest is denied.

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